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IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 220

CHESTER F. JACOBS, as County Treasurer of the County of Suffolk, and the COUNTY OF SUFFOLK OF THE STATE OF NEW YORK,

Appellants,

v.

WILLIAM ROGERS and ROSE ROGERS, his wife, PACT REALTY CORP. and TOWN OF BABYLON OF THE STATE OF NEW YORK,

Appellees.

On Appeal from the Court of Appeals of the State of New York

JURISDICTIONAL STATEMENT

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Appellees.

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment (order and remittitur) of the Court of Appeals of the State of New York entered March 5, 1970, affirming an order of the Appellate Division of the Supreme Court, Second Judicial Department, which modified, and, as modified affirmed a judgment of the Supreme Court at Special Term, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The memorandum opinion and amending memorandum in the Special Term of the Supreme Court is unreported and is printed in Appendix A hereto, infra, p. 11. The memorandum opinion of the Appellate Division of the Supreme Court, Second Judicial Department, is reported in 32 A.D. 2d 929, 303 N.Y.S. 2d 584, and printed in Appendix A hereto, infra, p. 21. The New York Court of Appeals affirmed the order of the Appellate Division without opinion. Its determination is unreported, and its order and remittitur is printed in Appendix A hereto, infra, p. 22.

Jurisdiction

This suit was brought by the former owners of the land to cancel a tax deed issued by the Treasurer of Suffolk County, New York, to Pact Realty Corp. to bar the claim of all persons to the realty and for other relief. The answers of the defendants were stricken and the relief sought, and more, granted. The order of the Court of Appeals was entered May 5, 1970, and notice of appeal was filed in the office of the Clerk of the Supreme Court, Suffolk County, on June 1, 1970.

The judgment was granted on the basis of Chapter 152 of the Laws of New York, 1929, as amended by Chapter 745 of the Laws of 1959: the New York courts upholding the validity of those state statutes. They were drawn in question by the answer of the tax sale purchaser which in an affirmative defense asserted any nullification of the

deed upon the grounds alleged in the complaint would result in a deprivation of federal constitutional rights under Article I, Section 10, and Amendment Five of the United States Constitution.

The jurisdiction of the Supreme Court to review this judgment by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following representative cases sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *James Stewart & Co.* v. *Sadrakula,* 309 U.S. 94, 60 S. Ct. 431, 84 L.Ed. 596; *People of the State of New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63, 49, S. Ct. 61, 73 L. Ed. 184; *Warren Trading Post Co.* v. *Arizona State Tax Commission,* 380 U.S. 685, 85 S. Ct. 1242, 14 L. Ed. 2d 165; *American Oil Co.* v. *Neill,* 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1.

Question Presented

After a tax sale is held and a contract thereby entered into between a county treasurer and a tax sale purchaser, may the subsequent act—or failure to act—of a third party municipal functionary, whose acts are by state statute deemed to be only directory and not mandatory, void the sale and render ineffectual the tax deed subsequently delivered pursuant to the contract, with the effect of depriving the government of its power to collect taxes?

Statutes Involved

United States Constitution, Article I, Section 10; Amendment V.

Sections 70 and 71 of the Suffolk County Tax Act (Laws of New York 1929 Chapter 152 as amended by Laws 1959, Chapter 745); section 1160(1) of the Real Property Tax Law, McKinney's Consolidated Law of New York, Book 49A (Laws of New York 1958, Chapter 959), are set forth in Appendix B hereto.

Statement

The determination of the New York Court of Appeals from which this appeal is taken not only impairs the obligation of a contract, and deprives a tax sale purchaser of his rightful property, it deprives local districts, governments and the state of imposed taxes and the power to tax. It is therefore of basic and far-reaching importance.

Presentation of the Federal Question

The federal question sought to be reviewed was raised in the court of first instance by an affirmative defense in pleading [Record (Appellants' Joint Appendix, stipulated as the whole record to be considered by the Court of Appeals, A147) pp. A59-A60]. The Supreme Court of New York passed upon the federal question by striking the answers of all the defendants [R, A15] and granting the relief demanded in the amended complaint [R, A15, A44-A45] and more (by voiding the tax sale as well as the deed) [R,

A15], on a motion and cross-motion for summary judgment [R, A18-A130] resolved in favor of the plaintiff. With a modification not important to this appeal, the Appellate Division affirmed [R, A150-A154] and the Court of Appeals affirmed the Appellate Division without opinion [R, Court of Appeals Order and Remittitur].

Nature of the Case

Appellees Rogers owned property on which they did not pay the second half tax for 1963-64. On November 16, 1964, appellant Jacobs, the Suffolk County Treasurer, sold the property at a tax sale. Appellee Pact Realty Corp., hereafter Pact, purchased the property which was not redeemed within the statutory period for redemption. The Treasurer gave a tax deed for the property to Pact on January 28, 1968, and it was recorded three days later [R, A132].

Contending that the tax bill for the property for the year 1964-65, which was made after the tax sale, did not have the word "arrears" stamped on it, as required by §71 of the Suffolk County Tax Act (Appendix B, infra, p. 25), and that the assessment roll for 1964-65, which was completed before the tax sale, likewise failed to have the tax item in question similarly marked as required by Suffolk County Tax Act §70 (Appendix B, infra, p. 25), Rogers, plaintiffs in the lower court, brought a bar claim action (the complaint is set forth in R, A31-A52) for judgment cancelling the tax deed and barring all persons from claiming as against plaintiffs any interest in the property.

The defendants, who were also appellants in the state courts, denied the material allegation of the complaint, except as to some facts of public record, and raised issues

including the question sought to be reviewed. Pact moved for summary judgment and Rogers cross-moved; the Special Term granted the cross-motion and the relief demanded in the complaint, and more (apparently under a prayer in the complaint for other and further relief) and struck out the answers of all defendants.

This judgment disposed of the assertion in the answer of Pact that voiding the contract made at the tax sale impaired the obligation of the contract and deprived Pact of its property without due process of law.

Making a technical modification and severing Pact's cross-claims against the appellees Town of Babylon and appellant, the Appellate Division affirmed the judgment [R, A153] on the basis of the invalidity of both the tax sale and tax deed because of the failure of the 1964-65 tax bills to have stamped thereon the word "arrears."

The Court of Appeals affirmed, without opinion, the order of the Appellate Division.

The Question is Substantial

In New York, all taxes imposed by school and other districts, most of the taxes imposed by towns and counties, and some of the taxes imposed by the state, are based on the ownership of real property. The collection of the tax is enforced, in cases of non-payment, by the sale by county treasurers of the property.

The tax sale creates a contract which is subject to defeasance only if the property owner redeems the property

within a statutory redemption period—in this case, three years.

After the tax sale, and during the period of redemption, functionaries of the town (the assessors, supervisor and tax receiver) prepare assessment rolls, tax bills and notices. The county treasurer, who conducts the sale, has no control over their acts. Doubtless for that reason a general and controlling state statute, §1160 of the Real Property Tax Law (Appendix B, infra, p. 26) provides that such acts are directory only and that failure to perform them shall not invalidate the lien of the tax on the property nor affect the title of the purchaser.

Notwithstanding, the New York courts have held such a directory act, viz., stamping "arrears" on a tax bill issued after the sale, if omitted, acted to void the sale, and, subsequently, the tax deed granted pursuant to the tax sale contract.

The state statutes, pertinent here, which provide for the acts of third parties are §§70, 71 Suffolk County Tax Act (Appendix B, infra, p. 25).

From the outset it was asserted by the defendant in the state courts that if it was applied as mandatory (and it was so applied) those statutes were invalid by reason of repugnancy to the federal constitution.

This Court held in *Wood* v. *Lovett*, 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404, that the sale of land for delinquent taxes constitutes a contract between the purchasers and the taxing municipality to whom the authority to sell has been

delegated by the state, and is within the constitutional provisions prohibiting impairment of the obligation of contracts.

The contracting parties are subject to the law in force at the time, and it is not contended any legislative action impaired the contract. Rather, it is the application put on the statutes necessitating third parties to perform ministerial and directive functions with which we are concerned. The Court of Appeals decisions has made mandatory that which the legislature said was to be directory, and by so doing has made §§70 and 71 of the Suffolk County Tax Act repugnant to the United States Constitution, Article I §10, and Amendment V.

Moreover, in order so to do, the Court supplied, as to appellant, an essential fact not in the record. The decision required a finding the 1964-65 tax bill did not have the word "arrears" stamped on it. There was no unequivocal statement in the complaint or otherwise before the court that this was the case. The bill was not before the Court. Rogers and Pact stipulated this was the fact [R, A27-A28], but appellant did not join in that stipulation. The only inference of the failure to place arrears on the 1964-65 bill was in paragraph 12th of the amended complaint [Record, A40] and this was denied in appellants' answer [R, A71].

The statements in the affirmation of Rogers' attorney that the word "arrears" was missing on the bill was based on the stipulation referred to, to which appellant was not a signatory.

When there are issues of material fact present, summary judgment is not properly granted. It is available as

a remedy when no material facts are in dispute and only questions of law are before the Court.

The error of supplying this key but missing fact is a profound one. But even though it were a fact the tax bill made after the contract did not have "arrears" stamped on it by a third party, that is not enough to void the contract for the law in effect at the time of the tax sale did not mandatorily require such notation. The error is judicial legislation.

In Suffolk County there are thousands of parcels sold for taxes annually and as the sales create arrears, by definition in §70 of the Tax Act, "[a]ll sales of property for non-payment of taxes or assessments shall be considered arrears * * *" the direction that the third party tax receivers in the county's ten towns stamp arrears on the tax bills sent out two or three weeks after the sale, when, pursuant to the same section, the treasurer does not notify the town authorities until "on or before September" of the following year, is one impossible to comply with as a practical matter.

Thus, although this case involves a relatively small amount dollarwise in its direct effect, indirectly it adversely affects the collection of very substantial sums of tax dollars, results in the impairment of thousands of contracts, and throws into question the title of thousands of parcels of real property, many of which are insured by title companies for amounts running into hundreds of thousands of dollars.

It is submitted the decision of the New York Court of Appeals erroneously applies law to a statute so that it re-

sults in the unconstitutional impairment of a contract, and, by cancelling a recorded deed, deprives a party of property without due process of law under the federal constitution.

The resulting question presented by this appeal is substantial and of great public importance.

Respectfully submitted,

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APPENDIX A

Opinions Below and Order Appealed From

Memorandum

SPECIAL TERM PART I

By GEILER J. S. C.

Dated November 25, 1968

SUPREME COURT, SUFFOLK COUNTY

Motion No. 2748
Ind No. 164,335
9/3/68

Motion by defendant Pact Realty Corp. (hereinafter referred to as Pact) for summary judgment dismissing the complaint and cross motion by plaintiffs for summary judgment.

Plaintiffs instituted this action pursuant to Article 15 of the Real Property Law of the State of New York, to set aside a tax deed executed and delivered by defendant Treasurer of the County of Suffolk (hereinafteer referred to as Treasurer) to Pact.

Plaintiffs admittedly failed to pay the second half of the 1963/64 taxes on their property located in the Town of Babylon, County of Suffolk. Pact purchased the subject property at a tax sale on November 16, 1964. The property was not redeemed within the 36 month redemption period and the Treasurer delivered a tax deed to Pact on January 28, 1968. Pact recorded the deed on January 31, 1968.

The parties herein have stipulated to the following facts:

1. The tax bill for 1964/65 and the assessment roll for 1964/65 did not have the word "arrears" stamped thereon.

2. The "County Treasurer's Notice" was not printed on the bottom of the face side of the tax bills from 1963/64 through 1967/68 but was printed on the reverse side of said tax bills.

3. The "County Treasurer's Notice" provides:

> "Whenever any tax or assessment shall remain unpaid for six months from February First, the property will be sold to satisfy such arrears of taxes or assessments, and all taxes and assessments upto a day to be named in the advertisement of sale. The amount of arrears may be obtained from and paid to the County Treasurer."

4. All of the above mentioned tax bills did not have a ruled column for arrears printed thereon.

Plaintiffs contend that the tax sale herein was void because the provisions of Section 71 of the Suffolk County Tax Act (hereinafter referred to as S.C.T.A.) were not strictly complied with by the taxing authorities. They especially argue that Section 71 of the S.C.T.A. required that arrears be noted on the 1964/65 tax bill and that the "County Treasurer's Notice" must be printed on the bottom of the front side of the tax bill.

Pact maintains that the plaintiffs have given an erroneous interpretation to Section 70 of the S.C.T.A. and therefore their contentions are without merit. The tax sale purchaser specifically asserts that the word "arrears" was not required to be noted on the 1964/65 tax bill because of the "operation of Section 70 of hte S.C.T.A. as amended in 1959." Pact also argues that the printing of the "County Treasurer's Notice" on the bottom of the reverse side of the tax bill complies with the requirements of Section 71 of the S.C.T.A.

Furthermore, Pact contends that plaintiffs' action is barred by the Statute of Limitations as contained in Section 63 of the S.C.T.A.

Section 71 of the S.C.T.A. provides:

> "SEC. 71. BILL OF TAXES TO SHOW ARREARS.
>
> There shall be a ruled column for arrears in every tax bill rendered for taxes for lots on which said arrears or assessments may be due, or may have been sold and are still redeemable, in which shall be written opposite the entry of the description of said lot or parcel of land "Arrears" and at the bottom of said bill printed "Whenever any tax or assessment shall remain unpaid for six months from February First, the property will be sold to satisfy such arrears of taxes or assessments, and all taxes and assessments up to a day to be named in the advertisement of sale. The amount of arrears may be obtained from and paid to the County Treasurer."

What was the purpose of the Legislature in enacting Section 71 of the S.C.T.A.? Why did they so minutely describe what must be contained in each tax bill? Why is the tax bill so important?

The tax bill is the only actual or personal notice a property owner receives with reference to the taxable status of his property in Suffolk County. He will receive no other notice of the taxable status of his property unless the property is to be sold for unpaid taxes due thereon. Then the only notice he receives is that of the sale and this notice is not given personally but only by publication as prescribed by Sections 42 and 43 of the S.C.T.A.

The Legislature, cognizant of these facts, wanted to make certain that the property owner was made aware of any possible loss of his property because of unpaid taxes.

They wanted this notice to be given in such a manner so as to alert not only the knowledgeable but also the uninformed property owner.

What was the best way to accomplish their purpose? How could they make even the most unsuspecting property owner aware of any tax monies due and owing?

The Legislature came to the conclusion that their purpose could best be achieved by mandating the format of the tax bill which every property owner receives. They therefore determined that the front of all tax bills in Suffolk County should contain certain items from which a property owner, regardless of his knowledgeability of real estate taxes, could determine, at a glance, if there were any tax arrears and the title of the County official from whom the property owner could obtain such vital information. Hence, Section 71 was enacted and has not been amended to date.

The 1963/64 tax bill admittedly does not conform to the exact provisions of Section 71 of the S.C.T.A. Must there be strict compliance with Section 71? Is the failure to follow Section 71 fatal to a tax sale?

These questions were clearly answered by Justice Glickman of this Court in the case of *Stebila* v. *Mitrany*, N.Y.L.J., December 24, 1965, P. 10 Col 5, affirmed by the Court of Appeals 21 N.Y.2d 930, in the following language:

> "The Court is satisfied from the facts disclosed in the papers that plaintiffs were afforded adequate notice and opportunity to make timely payments of the arrears and thus avoid the issuance by the County Treasurer of the deed which is the subject of this action. However sympathetic as the Court is to the contentions of defendant, it is constrained to hold that the failure to note "arrears" on the tax bill of 1958-1959 is sufficient in law to invalidate the tax sale and tax deed. In reaching this conclusion, the Court

is guided by decisional law contained in the case of Ierna v. Maranzano, 211 N.Y.S.2d 616, Erlwein v. Patchogue Homes Corp., 43 Misc.2d 707, 252 N.Y.S. 2d 220 and Proschieck v. Erlwein, N.Y.L.J. 7/31/64, p. 8 col. 5, Aff'd. 22 A.D.2d 1018, leave to appeal denied 15 N.Y.2d 486. In the last mentioned case, Justice Munder of this Court, in granting summary judgment declaring invalid a tax sale and deed for omission of the word "Arrears" on a subsequent tax bill, held that the provisions of Section 70 and 71 of the Suffolk County Tax Act are mandatory and require strict compliance."

Pact maintains that neither Stebila, *supra,* nor the "arrears" cases cited therein are determinative of the issues herein because these cases were decided prior to the 1959 amendment of Section 70 S.C.T.A. The tax sale purchaser contends that Section 70 of the S.C.T.A., as amended in 1959, controls Section 71 S.C.T.A. and by its operation "arrears" was not required to be noted on the 1964/65 tax bill.

Section 70 of the S.C.T.A. as amended reads as follows:

"§70. County treasurer to furnish supervisors with list of arrears. ~~The~~ Following each tax sale the county treasurer shall make a ~~complete list of all taxes and assessments in arrears~~ and shall file with each town supervisor, on or before the first day of September of each year, a list of all ~~arrears of~~ property sold for unpaid taxes and assessments on property in such town remaining unredeemed. All sales of property for non-payment of taxes or assessments shall be considered arrears and be included in such list until the deed has been given as herein provided or until the property is foreclosed and notice hereof received by the county treasurer as provided in sec-

tion sixty-two thereof. The supervisor of each town shall thereupon place in a column provided therefor the word "arrears" after the description of each parcel of land as shown on the above mentioned list."

(NOTE: Changes or additions in text are indicated by underline, deletions by ~~strikeouts~~).

Pact's position is based on the following syllogism:

1. Plaintiff's property was sold in November, 1964.

2. The County Treasurer, by virtue of Section 70 S.C. T.A., was not required to file with the Town of Babylon a list, showing plaintiffs' property sold for unpaid taxes, until September 1, 1965.

3. Section 70 S.C.T.A. states that "all sales of property for non payment of such taxes or assessments shall be considered arrears." [Note this provision was also in Section 70 prior to 1959 Amendment.]

4. The meaning of arrears is limited to property sold for non-payment of taxes.

5. Arrears did not exist until after the sale of plaintiffs' property.

6. The Town of Babylon did not receive the list of arrears (property sold for unpaid taxes) from the County Treasurer until after the tax bills for the year 1964/65 were sent out in December 1965.

7. Thus, "arrears" was not required to be noted on the 1964/65 tax bill.

Plaintiffs' position is untenable. It is based on a definition of "arrears" which has been refuted by Justice Ritchie

of this Court in the case of *Erlwein* v. *Patchogue Homes Corp.*, 252 N.Y.S.2d 220, at page 223:

> "* * * the interpretation of the word 'Arrears', as included in the Suffolk County Tax Act means only those arrears that have been established by a sale of the property for unpaid taxes.
> The Court does not agree with plaintiffs' contention."

What if no one purchased a particular piece of property offered at a tax sale because of non-payment of taxes? Does this mean, because the property is not sold, that there are no arrears? Doesn't the tax receiver, in the first instance, determine if there are arrears?

Thus it is clear that "arrears" was never intended to be limited to mean property sold for unpaid taxes. The only reasonable definition of "arrears" is its ordinary usage as defined in Black's Law Dictionary, 4th Edition, at page 140: "Money unpaid at due time."

This Court does not agree with Pact's contention that the Legislature modified or changed the mandatory provisions of Section 71 S.C.T.A. by the amendment to Section 70 S.C.T.A.

McKinney's Statutes, Section 73 states at page 110:

> "The Constitution of this State vests the Legislative power in the Senate and Assembly and that the Courts may not divest or usurp that power has been announced so frequently and in such varying language to defy repetition. Thus it is said that courts may not make, change, amend, or repeal a statute, since their function is to interpret, declare and enforce the law, not to make it. No matter what disastrous consequences may result from following

> the expressed intent of the Legislature the Judiciary cannot avoid its duty * * * They may not by interpretation add to or take from a clear and positive legislative mandate or substitute that which must be brought into existence by legislative mandate * * * but public policy or opinion should not sway the judiciary to read into a statute that which the Legislature might have inserted but did not. * * *"

The Legislature had an opportunity to expressly change or modify Section 71 S.C.T.A. They chose not to do so. This Court will not change Section 71 S.C.T.A. by implication in view of the fact that the Legislature, if it intended to change Section 71 S.C.T.A., refused to expressly modify or change the mandatory requirements of said section.

Furthermore, an examination of Sections 70 and 71 of the S.C.T.A. indicates that they accomplish two different and distinct purposes and neither section is repugnant to the other. The responsibility for the strict compliance with said sections lies with two different taxing authorities, namely the County and the Town respectively.

Section 391, McKinney's Statutes provides at Page 412:

> "It is only where there is an irreconcilable conflict between the acts or where the subsequent act is clearly intended to supersede the former statute that a repeal by implication arises. To avoid a repeal by implication courts will narrowly construe a statute to keep it from conflicting with another, and when by a fair construction some office or function can be assigned to both acts, or they confer different powers for different purposes both must stand, though they were designed to operate on the same general subjects."

Defendants are also erroneous in their contention that plaintiffs' action is barred by Section 63 S.C.T.A. Section

63 basically provides that an action to attack the validity of an assessment must be commenced within two years from the date of the receipt of the warrant by the receiver of taxes.

The plaintiffs are not attacking the validity of the assessment. They admit that the assessment is valid and thus Section 63 has no application herein.

The only section of the S.C.T.A. which is germane herein with reference to a statute of limitation period is 53. However, this action has been brought within the statutory period provided therein and therefore Section 53 is not an issue.

The Court abhors a forfeiture. It will not permit the plaintiffs, who have timely acted, to forfeit their real property because of the failure of the taxing authorities to comply with the provisions of Section 71 S.C.T.A.

The tax sale and deed are hereby declared invalid.

Plaintiffs' cross motion is granted and defendants' motion is denied.

Settle judgment.

/s/ William R. Geiler
J.S.C.

Appendix A

Memorandum Amending Memorandum of November 25, 1968

SUPREME COURT

SUFFOLK COUNTY

Special Term Part I

By GEILER, J.S.C.

Dated January 13, 1969

Motion #2748
9-3-68
Index #164,335

The Court, on its own motion, amends the decision dated November 25, 1968 to correct a typographical error on page 5 of the decision. The first sentence on page 5 shall read as follows:

"Pact's position is untenable."

/s/ WILLIAM R. GEILER
J.S.C.

Appendix A

Memorandum Opinion of Appellate Division, Second Department

By Christ, Acting P.J.: Brennan, Samuel Rabin, Munder and Martuscello, JJ.

ROGERS, res. v. PACT REALTY CORP., ap—Judgment of the Supreme Court, Suffolk County, dated Jan. 23, 1969, modified on the law, by inserting in the second ordering paragraph, following the word "answers," the words "to the amended complaint"; and by adding a paragraph severing the cross claims of defendant Pact Realty Corporation against the other defendants. As so modified, judgment affirmed, with one bill of $10 costs and disbursements to respondents, jointly against appellants filing separate briefs.

In our opinion, the tax sale and the tax deed to defendant Pact Realty Corporation, based on default in paying the second half of the 1963-64 taxes, were invalid because of the failure to have the word "Arrears" noted on the 1964-65 tax bill as required by section 71 of the Suffolk County Tax Act (see Hutch v. Platt, —— A. D. 2d ——, dec. herewith). The instant case does not involve the validity of a tax assessment and the provisions of section 63 of the Suffolk County Tax Act are therefore inapplicable. We find no grounds for disturbing the Special Term's determination, except as herein modified, in any of defendant's other contentions. The judgment is modified to permit a determination of the cross claims, a question which was not presented to or decided by the Special Term.

Appendix A

Order Appealed From

No. 400

COURT OF APPEALS

STATE OF NEW YORK, SS:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 5th day of March in the year of our Lord one thousand nine hundred and seventy, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge *Presiding.*

RAYMOND J. CANNON, *Clerk.*

REMITTITUR March 5, 1970.

2. No. 400. 69

WILLIAM ROGERS & ano., &c.,
Respondents,

vs.

PACT REALTY CORP., & ors., &c.,
Appellants.

BE IT REMEMBERED, That on the 4th day of September in the year of our Lord one thousand nine hundred and sixty-nine, Pact Realty Corp., & ors., &c., the appellants

in this cause, came here unto the Court of Appeals, by Moses Krivis, & ors., their attorneys, and filed in the said Court Notices of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And William Rogers & ano., &c., the respondents in said cause, afterwards appeared in said Court of Appeals by Elwood D. Hooper, their attorney.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Moses Krivis, of counsel for the appellant Pact Realty, and by Mr. Stanley S. Corwin, of counsel for the appellants Jacobs and County, submitted by the appellant Town, and argued by Mr. William M. Johnson, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be

enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,)
Albany, March 5, 1970.)

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL]

RAYMOND J. CANNON
Clerk.

APPENDIX B

Text of New York Statutes Involved

Suffolk County Tax Act §70 (Chapter 745 Laws 1959)

"SEC. 70. COUNTY TREASURER TO FURNISH SUPERVISORS WITH LIST OF ARREARS. Following each tax sale the county treasurer shall make and shall file with each town supervisor, on or before the first day of September of each year, a list of all property sold for unpaid taxes and assessments in such town remaining unredeemed. All sales of property for non-payment of taxes or assessments shall be considered arrears and be included in such list until the deed has been given as herein provided or until the property is foreclosed and notice hereof is received by the county treasurer as provided in section sixty-two thereof. The supervisor of each town shall thereupon place in a column provided therefor the word "arrears" after the description of each parcel of land as shown on the above mentioned list."

Suffolk County Tax Act §71 (Chapter 152, Laws 1929)

"SEC. 71. BILL OF TAXES TO SHOW ARREARS. There shall be a ruled column for arrears in every tax bill rendered for taxes for lots on which said arrears and assessments may be due, or may have been sold and are still redeemable, in which shall be written opposite the entry of the description of said lot or parcel of land 'Arrears' and at the bottom of said bill shall be printed 'Whenever any tax or assessment shall remain unpaid for six months from February first, the property will be sold to satisfy such arrears of taxes or assessments, and all taxes and assessments up to a day to be named in the advertisement of sale. The amount of arrears may be obtained from and paid to the county treasurer."

Appendix B

Real Property Tax Law §1160(1)
(Chapter 959, Laws 1958)

§1160. TAX SALE AND SALE OF TAX LIEN

1. It shall be the duty of the enforcing officer to enforce annually all tax liens by a tax sale, in accordance with the provisions of law governing the conduct of such sales, except as otherwise provided herein. The failure of the enforcing officer to enforce such tax lien shall not impair the lien or prevent a sale or stay any other proceedings for its enforcement after the time specified. All provisions with respect to procedure upon tax sales and sales of tax liens requiring acts to be done at or within or before specified times or dates, except provisions with respect to length of notice, shall be deemed directory and failure to take such action at or within the time specified shall not invalidate or otherwise affect such tax lien nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this article for any of the remedies for collection thereof in this article provided, nor affect the title of the purchaser under such proceedings.

SUPREME COURT, U. S.

In the United States Supreme Court

October Term, 1969 1970

Supreme Court, U.S.
FILED
JUN 3 1970
JOHN F. DAVIS, CLERK

No. [redacted]
221

WILLIAM ROGERS and ROSE ROGERS, his wife,

Appellees,

-against-

PACT REALTY CORP.,

Appellant,

TOWN OF BABYLON OF THE STATE OF NEW YORK; CHESTER F. JACOBS, as County Treasurer of the County of Suffolk, and the COUNTY OF SUFFOLK OF THE STATE OF NEW YORK,

Defendants-Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

No.

WILLIAM ROGERS and ROSE ROGERS, his wife,
Appellees,

-against-

PACT REALTY CORP.,
Appellant,

TOWN OF BABYLON OF THE STATE OF NEW YORK; CHESTER F. JACOBS, as County Treasurer of the County of Suffolk, and the COUNTY OF SUFFOLK OF THE STATE OF NEW YORK,
Defendants-Appellees.

JURISDICTIONAL STATEMENT

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Appellant appeals from the final judgment of the Court of Appeals of the State of New York, entered the fifth day of March, 1970, which, having affirmed the order of the Appellate Division, Second Judicial Department, affirming a judgment of

the Supreme Court, Suffolk County, State of New York, sustained the constitutionality of Section 71 of Chapter 152 of the Laws of 1929, known as the Suffolk County Tax Act (referred to hereinafter as SCTA) and construed and applied Section 70 of said Chapter 152 of the Laws of 1929, as amended by Chapter 745 of the Laws of 1959, in this case, and to the prejudice of appellant, in a manner repugnant to

(a) Article I, Section 10 of the United States Constitution;

(b) Amendment V of the United States Constitution;

(c) Article I, Section 6 of the New York State Constitution;

(d) Article III, Section 1 of the New York State Constitution;

as pleaded by appellant in its answer as a FOURTH AFFIRMATIVE DEFENSE.

Appellant, therefore, submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial constitutional questions are presented.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court, Suffolk County (R 131-146)* is not reported. The opinion of the Appellate Division, Second Department (R 152-153), affirming the order

*Numbers in parenthesis, unless otherwise indicated, refer to pages in the Record to be certified and transmitted to this Court and filed with this statement.

of the Suffolk County Supreme Court, is reported in 32 AD 2nd 929. The decision of the Court of Appeals of the State of New York is reported in 26 NY 2nd 872.

JURISDICTION

This action attacked the Suffolk County tax sale of November 16, 1964 (and the tax deed to appellant issuing therefrom), of appellees' real property located in Suffolk County, for the nonpayment of the second half of the 1963/64 real estate taxes. Appellees amended complaint (R 31-52) attacked the tax sale and the subsequently issued tax deed as being void on the grounds that there was an omission of the word "arrears" from the assessment roll of 1964/65 and the tax bill for 1964/65 received by appellees in violation of Secs. 70 and 71 SCTA; that by these omissions appellees were not "given proper notice on the tax assessment rolls" (R 40) and "the tax bill for said tax year 1964/1965" (R 40) of the 1963/64 delinquency. Special Term upheld the complaint, holding that the "arrears" omission on the 1964/65 assessment roll was not involved herein.

The Appellate Division affirmed the judgment of Special Term, of the Suffolk County Supreme Court on the grounds that the omission of "arrears" on the 1964/65 tax bill, as required by Sec. 71 SCTA, mailed by the Tax Receiver after the tax sale, rendered the November 16, 1964 tax sale and later issued tax deed invalid. Except for severing appellant's cross claims against the other two defendants, the Appellate Division affirmed Special Term's judgment. The Court of Appeals, without opinion, affirmed.

Appellant's answer expressly pleaded the constitutional provisions of both the United States and New York Constitutions which appellant claimed were violated by Special

Term. Neither the Appellate Division nor the Court of Appeals made mention of the constitutional questions raised. By its affirmance, the Court of Appeals sustained the constitutionality of Special Term's construction of Secs. 70-71 SCTA to appellant's disadvantage.

The order of the New York Court of Appeals necessarily passed on and rejected appellant's constitutional allegations. The judgment of the New York Court of Appeals was dated March 5, 1970 and entered on March 5, 1970. Notice of Appeal was filed by appellant with the Clerk of the New York Court of Appeals and the Clerk of the Supreme Court of Suffolk County on May 26, 1970.

Thus, lying before this Court for review is a judgment of the highest court of New York State which has upheld the validity and constitutional construction of statutes of the State of New York, namely, § § 70 and 71 of the SCTA. This Court, therefore, has jurisdiction to review the judgment of the Court of Appeals by direct appeal, such jurisdiction being conferred on this Court by 28 U. S. Code, Section 1257 (2).

That this appeal properly lies before this Court for review is supported by numerous decisions. Applying the test of the term "statute of any state" as used in Section 1257 (2), it has been held generally by prior decisions of the Supreme Court, to embrace any legislative enactment, which the state has sanctioned or passed, not merely statutes of statewide application but statutes of purely local application, such as a city or town ordinance (*Reinman v. City of Little Rock*, 237 US 171, 35 S. Ct. 511, 59 L. Ed 900; *Zucht v. King*, 260 US 174, 43 S. Ct. 24, 67 L. Ed. 194; *Goldblatt v. Town of Hempstead, New York*, 369 US 590, 82 S. Ct. 987, 9 L. Ed. 2d 130).

While §§ 70 and 71 SCTA apply solely to Suffolk County, they nevertheless are statutes of the State of New York, within the meaning of 28 US Code Sec. 1257 (2) and, on this appeal, are cognizable by this Court under that Section.

SUBSTANTIAL QUESTIONS INVOLVED

The questions presented in this case are so substantial as to require plenary consideration, with briefs on the merits and oral arguments, for their resolution. The status of nearly every tax title issued by the Suffolk County Treasurer since 1959 is involved herein, since every Suffolk County Treasurer has interpreted §§ 70-71 exactly as has Chester F. Jacobs, the Suffolk County Treasurer involved as a defendant in this case. As a result of the decision appealed from, the bulk of the last ten years tax sales are invalid for the same reasons as were advanced in this case.

The Treasurers' interpretation of §§70-71 SCTA was accepted by the public, title companies and mortgage lenders for 10 years. Industrial, public and residential structures have now been built on some of the vacant land conveyed by tax deeds issued under that interpretation. Under the rule of this case, if not reversed, present occupants of said structures built on such land will be dispossessed by the delinquent taxpayers involved, to the great financial loss of title companies and mortgage lenders. The County will have to refund all the consideration it has received from grantees to whom it had conveyed title based on such tax sales. The economy of Suffolk County will be seriously affected by this decision.

Thousands of tax titles, since 1959, have become unsettled, by the rule of the law of this case. §71 SCTA was enacted in 1929, after which every Suffolk County Treasurer issued tax deeds which carried the alleged defects attacked in